

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5th Street
Kansas City, Kansas

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the matter of:

Echo-L, Inc.

A Missouri Corporation
Fulton, Missouri

Respondent

Proceedings under
Section 309(g) of the Clean Water Act,
33 U.S.C. § 1319(g)

DOCKET NO. CWA-07-2004-0175

COMPLAINT AND
CONSENT AGREEMENT/
FINAL ORDER

COMPLAINT

Jurisdiction

1. This administrative action is being conducted pursuant to Section 309(a) and (g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that the Environmental Protection Agency (EPA) has reason to believe that Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 33 U.S.C. § 1342.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region VII, is the Director of Region VII's Water, Wetlands, and Pesticides Division.

4. The Respondent is Echo-L, Inc., which is incorporated in the state of Missouri.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

8. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

9. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, *inter alia*, biological materials and agricultural waste discharged to water.

10. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362 to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

11. “Animal feeding operation” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

12. “Concentrated animal feeding operation” is defined by 40 C.F.R. § 122.23(b)(3) as “an ‘animal feeding operation’ which meets the criteria in appendix B of this part.”

13. Appendix B to 40 C.F.R. § 122.23 states that an animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if the animal feeding operation confines more than 200 mature dairy cattle, and pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar man-made device.

14. "Waters of the United States" are defined in 40 C.F.R. Part 122.2 to include intrastate rivers and streams, and tributaries thereto.

15. The Missouri Department of Natural Resources (MDNR) is the agency within the State of Missouri with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between the United States EPA and MDNR. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

16. The regulations promulgated by the MDNR that apply to concentrated animal feeding operations are set forth at 10 CSR 20-6.300. These regulations define man-made conveyance as follows:

A device constructed by man and used for the purpose of transporting wastes, wastewater, or storm water into waters of the state. This includes, but is not limited to, ditches, pipes, gutters, emergency overflow structures, grass waterways, constructed wetland treatment systems, overland flow treatment systems, or similar systems.

Factual Background

17. Respondent is a corporation and is therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

18. Respondent operates an animal feeding operation (Facility) located in NE1/4, SW 1/4, Section 31, T48N, R9W, Callaway County, Missouri.

19. The Facility consists of two confinement farms on contiguous land. The older facility will hereinafter be referred to as "ECHO-L1" and the newer facility will hereinafter be referred to as "ECHO-L2."

20. Animal wastes and runoff from the confined feeding areas at the Facility are collected and stored in ECHO-L1 and ECHO-L2 lagoons until they are disposed of through land application to croplands. Any discharges from the Facility would flow to an unnamed tributary of Stinson Creek or an unnamed tributary of Smith Branch.

21. On February 12, 2003, EPA conducted an NPDES inspection of Respondent's Facility.

22. At the time of the inspection, Respondent confined approximately 500 dairy cattle at the Facility. Since at least September 2001, Respondent has confined and fed more than 200 mature dairy cattle at the Facility.

23. Since at least September 2001, Respondent has confined and fed or maintained dairy cattle at the Facility for a total of forty-five (45) days or more during the previous twelve months.

24. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the Facility at the time of inspection.

25. In 1997, a transfer pipe at the Facility became clogged, resulting in the discharge of wastewater to Smith Branch. At the time, Respondent did not have an NPDES permit for the Facility.

26. Respondent subsequently applied to MDNR for an NPDES permit for a concentrated animal feeding operation, and MDNR issued an NPDES permit for a concentrated animal feeding operation, No. MO-G010552, to Echo-L effective February 23, 2001. The permit is scheduled to expire February 22, 2006.

27. Respondent operates a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(3).

28. The Facility is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

29. Respondent's NPDES permit states that the permittee shall not allow a discharge to waters of the state except during storms exceeding the design storm event. The design storm event is defined by Respondent's NPDES permit as the 25-year, 24-hour storm (5.60 inches of rain); the 10-year, 10-day storm (7.62 inches of rain), the 10-year, 365-day rainfall; and the 10-year, 365-day rainfall minus evaporation.

30. At the time of the EPA inspection in February 2003, manure-laden wastewater was flowing from the lagoon at the ECHO-L2 portion of the Facility and was being discharged into an unnamed tributary of Stinson Creek.

31. The wastewater discharge observed by the EPA inspector from the ECHO-L2 lagoon into the unnamed tributary of Stinson Creek did not result from a design storm event.

32. Analysis of water samples taken by the EPA inspector from the unnamed tributary of Stinson Creek at the time of the February 12, 2003 inspection show that the discharge of wastewater from the Facility caused violations of general and specific criteria of the Missouri Water Quality Standards.

33. The unnamed tributary of Stinson Creek and Stinson Creek are waters of the U.S. as defined by 40 C.F.R. § 122.2.

34. During the February 2003 EPA inspection, the EPA inspector observed evidence of two previous discharges from the ECHO-L2 lagoon to an unnamed tributary of Stinson Creek. Respondent has indicated these discharges probably occurred in the spring of 2002.

35. Rainfall records maintained by the Respondent show that these prior discharges did not result from a design storm event.

36. Respondent's discharge of manure-laden wastewaters from the Facility lagoon to waters of the United States in spring 2002 and February 2003 were unauthorized discharges of pollutants from a point source to waters of the United States, in violation of NPDES Permit MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.

37. Respondent's NPDES permit requires that Respondent report discharges occurring other than during a 25-year, 24-hour storm event or larger 24-hour event to MDNR within 24 hours.

38. Respondent did not report to MDNR the discharge observed by the EPA inspector on February 12, 2003.

39. Respondent failed to report to MDNR the discharges at the Facility which Respondent indicated occurred in spring 2002.

40. Respondent's failure to report the three aforementioned unauthorized discharges of manure-laden wastewaters to MDNR within 24 hours is in violation of Permit MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.

41. Respondent's NPDES permit specifies that the maximum operating level for uncovered storage structures at the Facility is one foot below the emergency overflow level.

42. Respondent's NPDES permit also provides that a construction permit or construction letter of approval is required prior to modification of the waste handling facilities.

43. Immediately prior to the EPA inspection in February 2003, the liquid level of the ECHO-L2 lagoon was less than one foot below the emergency overflow level. Respondent blocked the ECHO-L2 emergency spillway with a 1.5 foot pile of dirt, thereby increasing the capacity of the lagoon beyond the maximum operating level and increasing the risk of berm failure.

44. Respondent did not obtain MDNR approval before modifying the lagoon by blocking the emergency spillway.

45. Respondent's modification of the waste handling facility by blocking the emergency spillway at the ECHO-L2 lagoon without obtaining prior approval from MDNR is a violation of NPDES Permit MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.

Findings of Violation

46. The facts stated in paragraphs 17 through 45 above are herein incorporated.

Count I - Unauthorized Discharges

47. On three occasions, twice in spring 2002 and once in February, 2003, Respondent Echo-L discharged manure-laden wastewaters from the Facility lagoon to waters of the United States in lesser precipitation events than the design storm, as defined by Respondent's NPDES permit. These unauthorized discharges of pollutants from a point source to waters of the United States are in violation of NPDES Permit MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.

Count II - Failure to Monitor, Record, and Report

48. Respondent failed to report the three aforementioned unauthorized discharges of manure-laden wastewaters to MDNR within 24 hours. This is a violation of Permit MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.

Count III - Modification of Waste Handling Facility Without Approval

49. Respondent modified the waste handling facility by blocking the emergency

spillway at the ECHO-L2 lagoon without obtaining prior approval from MDNR, in violation of Permit

MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.

CONSENT AGREEMENT

50. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

51. Respondent neither admits nor denies the factual allegations or Findings of Violation contained in this Complaint and Consent Agreement/Final Order.

52. Respondent waives any right to contest the allegations and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

53. Respondent and Complainant each agree to bear their own costs and attorney's fees.

54. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

55. Solely for the purpose of settling this matter and thereby avoiding the expense and uncertainties involved in a formal adjudication, Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

56. Respondent agrees to pay a penalty of Fourteen Thousand and Ninety-eight Dollars (\$14,098) in four quarterly installments of Three Thousand Five Hundred Forty Dollars and sixty-six cents (\$3,540.66) that includes principal and accrued interest on the outstanding principal for a period of one (1) year beginning thirty (30) days after the effective date of this Consent Agreement and Final Order.

57. Respondent agrees that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently 1.0 percent per annum for the period January 1, 2004, through December 31, 2004), compounded daily.

58. The penalty payment made by Respondent pursuant to this Complaint and Consent

Agreement/Final Order is payment of a civil penalty and shall not be deductible for purposes of federal taxes.

59. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Fourteen Thousand and Ninety Eight Dollars (\$14,098) plus interest. The penalty shall be paid quarterly in four equal installments of Three Thousand Five Hundred Forty Dollars and sixty-six cents (\$3,540.66). The first installment shall be paid within thirty (30) days of receipt of a copy of this fully executed CAFO. The subsequent three installments shall be paid quarterly following payment of the initial installment. Payment shall be by cashier's or certified check, made payable to "Treasurer, United States of America," and referencing EPA Docket No. CWA-07-2004-0175, and remitted to:

EPA - Region VII
Attn.: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

Copies of the check shall be mailed to:

J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

2. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

3. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

4. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

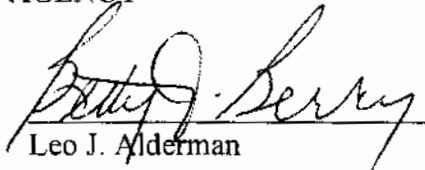
5. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

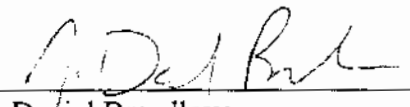
7. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

06/18/04
Date



Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII

6/17/04
Date


J. Daniel Breedlove
Assistant Regional Counsel
Region VII

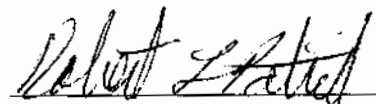
RESPONDENT:
Echo-L, INC.

5-16-04
Date


Name: Tim Echelmeier
Title: President

IT IS SO ORDERED.

June 23, 2004
Date


Robert L. Patrick
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

Echo-L, Inc.
Tim Echelmeier
4651 State Road HH
Fulton, MO 65251

Dated this 16 day of May, 2004. *TE*

Tim Echelmeier
Name *Tim Echelmeier*

IN THE MATTER OF ECHO-L, Inc., Respondent
Docket No. CWA-07-2004-0175

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

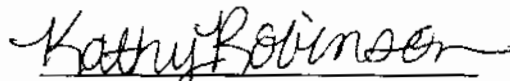
Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Echo-L, Inc.
Tim Echelmeier
4651 State Road HH
Fulton, Missouri 65251

Dated: 6/23/04


Kathy Robinson
Regional Hearing Clerk